

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

TRACIE JANE WEST,

Grievant,

v.

DOCKET NO. 2013-1674-MarED

MARSHALL COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Tracie Jane West (“Grievant”) filed this grievance at Level One of the grievance procedure on April 3, 2013, against the Marshall County Board of Education (“MCBOE” or “Respondent”). Her grievance included the following statement of grievance:

Grievant, a Secretary II at an elementary school, alleges that she is misclassified and should be reclassified as a Secretary II/Accountant II as she is performing the duties of both classifications. Grievant alleges a violation of W. Va. Code 18A-4-8 and 18A-4-8a.

As relief, Grievant sought “reclassification as a Secretary II/Accountant II, wages, benefits, and seniority retroactive to January 2012. Grievant also seeks an award of interest on all monetary sums.” A Level One hearing was held on May 7, 2013, and a written decision denying the grievance was issued on June 10, 2013, by the chief administrator’s designee, Dr. Bonnie Ritz. This matter proceeded through mediation at Level Two, and Grievant appealed to Level Three on October 24, 2013.

A Level Three hearing was conducted in the Grievance Board’s office in Westover, West Virginia, on March 27, 2014. Grievant was represented by John Roush, Esquire, with the West Virginia School Service Personnel Association, and

Respondent was represented by Richard S. Boothby, Esquire, with Bowles Rice. This matter became mature for decision on May 8, 2014, upon receipt of the last of the parties' post-hearing proposals.

Synopsis

Grievant is employed by Respondent Marshall County Board of Education ("MCBOE") as a Secretary II. At the time this grievance was initiated, Grievant was the School Secretary at Washington Lands Elementary School. Subsequent to the Level One decision, Grievant transferred to an equivalent position as the School Secretary at Glendale Elementary School. Grievant's day-to-day duties did not change as a result of the transfer, although Glendale is a smaller school.

Grievant, who previously passed the competency test for the Accountant school service personnel classification, established by a preponderance of the evidence that a significant portion of her regular and recurring duties, including some duties that occur on a daily basis, represent tasks that are best encompassed by the classification of Accountant II. Although Grievant's accounting duties were not shown to be predominant, this is not a prerequisite to attain multiclassification status under W. Va. Code § 18A-4-8(a)(62). Accordingly, this grievance will be GRANTED.

The following Findings of Fact are made based upon the record developed through the hearings conducted at Levels One and Three.

Findings of Fact

1. Grievant is presently employed by Respondent Marshall County Board of Education ("MCBOE") as the School Secretary at Glendale Elementary School ("Glendale").

2. At the time this grievance was filed in April 2013, Grievant was employed by MCBOE as the School Secretary at Washington Lands Elementary School ("Washington Lands").

3. At all times pertinent to this grievance, Grievant has held the school service personnel classification of Secretary II.

4. Subsequent to the Level One hearing on this grievance in May 2013, Grievant voluntarily transferred to her current position at Glendale.

5. Although Glendale has approximately 100 fewer students than Washington Lands, the nature of Grievant's job duties did not change significantly as a result of this transfer. Both schools have only one Secretary assigned.

6. In 2007, Grievant passed the competency test for the school service personnel classification of Accountant.

7. Grievant performs the following tasks in the course of her service as School Secretary at Glendale Elementary School:

a. Records attendance data including students who are absent, arriving late, or leaving early on a daily basis.

b. Receipts for and counts milk money from students and records the amounts in Primero and School Funds Online¹ ("SFO"), separate online accounting programs, using a personal computer on a daily basis: prepares bank deposits on at

¹ MCBOE began using this online accounting program at all schools in January 2012.

least a weekly basis; reconciles the deposits with the computer records, and writes a check on the school's account to the county office to pay for milk purchased on a monthly basis. Either Grievant or the School Principal takes the deposit to the bank.

c. Prepares correspondence to parents regarding students with excessive absences on a weekly basis.

d. Answers the telephone and delivers messages, as required, on a daily basis.

e. Enrolls and removes students from the West Virginia Education Information System ("WVEIS") on an occasional, as-needed basis.

f. Records attendance of staff for use in administering payroll on a daily basis; prepares reports verifying payroll accuracy every two weeks.

g. Records documentation for payment of substitute personnel on an as-needed basis.

h. Receives money gathered for all school-related activities, such as field trips and fund-raising events, and counts funds received to verify amount matches the amount contained in a cash log prepared by the initial fund collector; enters the amounts in the SFO program, issues a receipt for the amount received, and makes periodic bank deposits. This includes money collected by the Parent-Teachers Organization ("PTO"), which is called Together Everyone Achieves More ("TEAM") at Glendale, as well as funds allocated to the Faculty Senate.

i. Creates new vendor files within the SFO program, as required.

- j. Creates an “event code” for each new fund-generating activity within the school.
- k. Prepares all checks and signs each check along with the School Principal, as required; prepares an accompanying Purchase Order to document each expenditure involving issuance of a check.
- l. Reconciles the bank records for the school checking account on a monthly basis using the SFO program, generating a report for approval by the School Principal and submission to the county office.
- m. Posts all bank deposits in the SFO program as they are made.
- n. Records journal entries such as interest received, fees for returned checks and other bank fees, in the SFO program.
- o. Processes checks returned by the bank for non-sufficient funds to include reversing the deposit and contacting the check writer for payment.
- p. Transfers funds within subaccounts to cover specific authorized expenditures and document funding sources applied to invoices.
- q. Prepares profit and loss statements for each fund-raising activity to include total cost of goods purchased and proceeds received. These statements are ultimately audited within the school system on an annual basis.
- r. Prepares purchase orders to account for all funds applied to purchase from vendors.
- s. Prepares checks to pay for authorized credit card purchases using the school’s credit card or Purchasing Card.

t. Prepares and files correspondence relating to the general operation of the school.

u. Reviews and collects records and reports in preparation for annual audit.

8. The percentage of time Grievant spends on accounting-related duties varies from day to day, and involves anywhere from 10 to 70 per cent of her working time on a given day.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rule of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 3 (2008). See *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997). “A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997).

Employment conditions of school service personnel are governed by multiple statutory provisions. W. Va. Code § 18A-1-1(a) provides that “school personnel” means all personnel employed by a county board of education and consists of two categories: (1) professional personnel; and (2) service personnel. In regard to service personnel, the following provisions in W. Va. Code § 18A-4-8 are germane to this grievance:

(a) The purpose of this section is to establish an employment term and class titles for service personnel. . . .

* * *

(5) "Accountant II" means a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

* * *

(62) "Multiclassification" means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale shall be the higher pay grade of the class titles involved;

* * *

(77) "Secretary II" means a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes, stenotype, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification;

* * *

In addition to these pertinent statutory provisions, there is also a significant body of law in West Virginia regarding application of these statutes to school service personnel and other county board of education employees. Thus, any analysis must begin by recognizing that "[c]ounty boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Syl. Pt. 3, *Dillon v. Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986). Further, school personnel regulations

and laws are to be construed strictly in favor of the employee. Syl. Pt. 1, *Morgan v. Pizzino*, 163 W. Va. 454, 256 S.E.2d 592 (1979).

In regard to this particular claim, the burden of proof is on Grievant to establish, by a preponderance of the evidence, that her duties closely match another W. Va. Code § 18A-4-8 class title under which her position is not currently categorized. See *Pierantozzi v. Brooke County Bd. of Educ.*, Docket No. 96-05-061 (May 31, 1996); *Porter v. Hancock County Bd. of Educ.*, Docket No. 95-15-493 (May 24, 1994); *Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (Apr. 15, 1991). In this matter, Grievant is seeking the multi-classified title of Secretary II/Accountant II. A multi-classified service employee performs “tasks that involve the combination of two or more class titles.” W. Va. Code § 18A-4-8(a)(62).

An employee seeking a multiclassification title must establish, by the same preponderance of the evidence standard, that her duties encompass those of all class titles identified. *Ellison v. Fayette County Bd. of Educ.*, Docket No. 97-10-258 (Sept. 18, 1997). See *Kinstler v. Raleigh County Bd. of Educ.*, Docket No. 92-41-468 (June 23, 1993). Merely being required to perform some responsibilities normally associated with another classification, even regularly, does not necessarily mean that Grievant is misclassified. See *Midkiff v. Lincoln County Bd. of Educ.*, Docket No. 95-22-262 (Mar. 19, 1996); *Hamilton v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (Apr. 15, 1991). However, when a service employee regularly performs work in her own and another classification, multiclassification is required. *White v. Randolph County Bd. of*

Educ., Docket No. 94-42-033 (Aug. 15, 1994); *Bailey v. Mercer County Bd. of Educ.*, Docket No. 91-27-158 (Jan. 31, 1992).

Grievant described various duties which she performs which require her to account for and track multiple funds received and expenditures made. Although the information regarding income and expenditures which she records may be provided by others, such as the School Principal, teachers and PTO officers, maintaining such financial records nonetheless represents an accounting function and not mere “record keeping.” The number and frequency of these job duties appear to have grown in the past several years as a result of an effort to ensure that all funds generated in and around the school and its various activities and organizations are maintained in a responsible manner to deter any avoidable fraud, abuse or embezzlement. There is no dispute between the parties in regard to whether Grievant performs these assigned duties as part of her job on a daily, weekly, or monthly basis, only what percentage of her time is spent on such accounting-related duties.

A preponderance of the evidence indicates that Grievant’s predominant duties on any given day are those of a School Secretary, which matches the Secretary II classification. Such tasks as answering phones, preparing and filing correspondence, maintaining attendance records, and recording student transfers in a database are typical clerical/secretarial duties and responsibilities. However, some of Grievant’s assigned tasks, such as preparing a profit and loss statement for all school-related fund-raising projects using Excel spreadsheets, and the accounting records maintained using the School Funds Online computer program, are more closely associated with someone

“responsible for the accounting process” as stated in the class definition for an Accountant II, rather than a routine secretarial or clerical function. Moreover, the totality of Grievant’s accounting-related duties are generally comparable to the work performed by service employees who were determined entitled to the Accountant II class title in prior decisions of this Grievance Board, including *Lilly v. Harrison County Bd. of Educ.*, Docket No. 97-17-330 (Apr. 13, 1998); *Ellison, supra*, *Sammons v. Mingo County Bd. of Educ.*, Docket No. 96-29-356 (Dec. 30, 1996), and *Higgins v. Randolph County Bd. of Educ.*, Docket No. 94-42-1111 (Dec. 27, 1995).

While the accounting-related duties Grievant regularly performs may not be predominant during an average workday, W. Va. Code § 18A-4-8 does not establish such predominance as a prerequisite for being assigned a multiclassification. Of course, the work performed must be more than infrequent and inconsequential work from another classification to support reclassification. *See Bailey, supra*. In this matter, Grievant established that her job duties represent a combination of tasks contained in two service personnel titles. Because the duties performed that fall under the definition of Accountant II are performed regularly and constitute a substantial portion of Grievant’s ordinary duties, she has satisfied the preponderant evidence standard, and established that she should be multi-classified as a Secretary II/Accountant II.

Because these two classifications are in the same pay grade, Grievant clarified her grievance to indicate she is not seeking back pay. Instead, she only seeks reclassification to a multi-classified position including the Accountant II classification with appropriate seniority. Grievant has been aware of the various accounting tasks

which she has been assigned to perform since the inception of her employment, but did not grieve her classification until April 3, 2013. MCBOE did not object to the timeliness of her grievance. Any such objection would have been fruitless because this grievance involves a matter which represents a “continuing practice” within the meaning and intent of W. Va. Code § 6C-2-3(a)(1). See *Brown v. Hancock County Bd. of Educ.*, Docket No. 2011-0894-HanED (Nov. 23, 2011). Nonetheless, Grievant requests retroactive seniority in the service personnel classification of Accountant II “as far back as possible.”

In accordance with Syllabus Point 5 of *Martin v. Randolph County Bd. of Educ.*, 195 W. Va. 297, 465 S.E.2d 399 (1995), Grievant is only entitled to reclassification as a multi-classified Secretary II/Accountant II “from and after fifteen days preceding the filing of the grievance.” See also *Frye v. Wayne County Bd. of Educ.*, Docket No. 06-05-115 (Sept. 8, 2006); *Hamilton v. Jackson County Bd. of Educ.*, Docket No. 91-18-264 (Mar. 31, 1992); *Chambers-Cooper v. Roane County Bd. of Educ.*, Docket No. 90-44-385 (Jan. 15, 1991). On its face, the limitation in *Martin* is not restricted to those matters in which the employer raises a timeliness defense before Level II of the grievance procedure. Although the Court’s discussion in *Martin* referenced W. Va. Code § 18-29-4(a)(1) and § 18-29-2, these provisions were both repealed in 2007. However, the language in W. Va. Code § 18-29-4(a)(1), which explicitly allowed a grievance to be filed “within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance,” has been incorporated verbatim into the current law governing the public employee grievance procedure as part of W. Va. Code § 6C-2-4(a)(1).

The former grievance procedure for school employees also included a provision stating: “The doctrine of laches shall not be applied to prevent a grievant or grievants from recovering back pay **or other appropriate relief** for a period of one year prior to the filing of a grievance based upon a continuing practice.” W. Va. Code § 18-29-3(v) (emphasis added). Upon repeal of this provision in 2007, the current grievance procedure supplanted the former with the following restriction: “When it is a proper remedy, back pay may only be granted for one year prior to the filing of a grievance, unless the grievant shows, by a preponderance of the evidence, that the employer acted in bad faith in concealing the facts giving rise to the claim for back pay, in which case an eighteen-month limitation on back pay applies.” W. Va. Code § 6C-2-3(c)(2).

The primary distinction between W. Va. Code § 18-29-3(v) and W. Va. Code § 6C-2-3(c)(2) is that the former provides for “other appropriate relief,” in addition to back pay, while the latter addresses back pay only. Generally, in the interpretation of statutory provisions the maxim of *expressio unius est exclusion alterius*, the express mention of one thing implies the exclusion of another, applies. See Syl. Pt. 3, *Manchin v. Dunfee*, 174 W. Va. 532, 327 S.E.2d 710 (1984). In this instance, not only does the most recent statutory enactment not mention remedies other than back pay, the earlier provision which broadly included “other appropriate relief” has been repealed. The undersigned Administrative Law Judge finds that these circumstances demonstrate clear legislative intent to limit the remedies available to grievants in matters such as this. Moreover, Grievant failed to establish any exception² which would warrant extending the date of her seniority to an earlier date.

² For example, there was no suggestion that anyone promised Grievant that her misclassification situation

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rule of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 3 (2008). See *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Runyon v. Mingo County Bd. of Educ.*, Docket No. 93-29-481 (Apr. 4, 1993).

2. In order to prevail on a claim that her position is misclassified, an employee must establish, by a preponderance of the evidence, that her duties more closely match those of a classification defined by W. Va. Code § 18A-4-8, other than that under which her position is categorized. *Pope v. Mingo County Bd. of Educ.*, Docket No. 91-28-069 (July 31, 1992).

3. W. Va. Code § 18A-4-8(a)(5) defines “Accountant II” as “a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations.”

4. W. Va. Code § 18A-4-8(a)(77) defines “Secretary II” as:

a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes, stenotype, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification

would be rectified, thus causing her to delay filing this grievance. See *Naylor v. W. Va. Human Rights Comm’n*, 180 W. Va. 634, 378 S.E.2d 843 (1989).

5. W. Va. Code § 18A-4-8(a)(62) defines “Multiclassification” as “a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale shall be the higher pay grade of the class titles involved.”

6. Incidental duties which are not outside the responsibilities defined for a class title, and which require an inconsequential amount of time to complete, will not warrant a different classification, if the remainder of one’s duties are accurately described by the current classification. *Graham v. Nicholas County Bd. of Educ.*, Docket No. 93-34-224 (Jan. 6, 1994), *citing Martin v. Fayette County Bd. of Educ.*, Docket No. 89-10-110 (July 20, 1989).

7. Grievant established by a preponderance of the evidence that a significant amount of her time is spent performing duties which more closely match those of the class title in W. Va. Code § 18A-4-8(a)(5) of an Accountant II, rather than Secretary II.

Therefore, this grievance is **GRANTED**.

MCBOE is hereby **ORDERED** to change Grievant’s service personnel classification to a multi-classified Secretary II/Accountant II, effective 15 days prior to April 3, 2013, the date this grievance was filed, with seniority in the additional classification of Accountant II commencing on that same date.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. Va. Code § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any

of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: May 19, 2014

LEWIS G. BREWER
Administrative Law Judge